

REPRESENTATIVES FOR PETITIONER:  
Mr. William S. Faulkner, Ducharme, McMillen & Associates, Inc.

REPRESENTATIVES FOR RESPONDENT:  
Ms. Gail Sims, Jefferson County Assessor  
Ms. Delores Barnes, PTABOA Member  
Mr. George Thomas, PTABOA Member  
Mr. James Martin, PTABOA Member  
Mr. Elbert Hines, PTABOA Member

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

DOVER INDUSTRIES/ROTARTY )	Petition for Correction of Error, Form 133
LIFT DIVISION, )	
)	Petition No.: 39-011-01-3-7-00001
Petitioner )	
)	County: Jefferson County
v. )	
)	Township: Madison
MADISON TOWNSHIP )	
ASSESSOR, )	Parcel No.: 211-00776-00
)	
)	
Respondent )	Assessment Year: 2001
)	

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Appeal from the Final Determination of  
Jefferson County Property Tax Assessment Board of Appeals

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**January 13, 2004**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **Findings of Fact and Conclusions of Law**

### **Issues**

1. The issues presented for consideration by the Board were:

Issue 1 – *Whether the total cost of depreciable assets erroneously includes the cost of application software.*

Issue 2 – *Whether the total cost of depreciable assets erroneously includes the cost of certain real property items.*

Issue 3 – *Whether the total cost of depreciable assets should be adjusted to reflect the value of items classified as special tools.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-12, William Faulkner, Ducharme, McMillen & Associates, Inc., filed a Form 133 on behalf of Dover Industries/Rotary Lift Division (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The determination of the Jefferson County Property Tax Assessment Board of Appeals (PTABOA) was issued on June 5, 2003. The Form 133 was filed with the Board on June 27, 2003.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on October 16, 2003, in Madison, Indiana before Kay Schwade, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:

For the Petitioner:

Mr. William Faulkner, Ducharme, McMillen & Associates, Inc.

For the Respondent:

Ms. Gail Sims, Jefferson County Assessor

Ms. Delores Barnes, PTABOA Member

Mr. George Thomas, PTABOA Member

Mr. James Martin, PTABOA Member

Mr. Elbert Hines, PTABOA Member

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Mr. William Faulkner

For the Respondent:

Ms. Gail Sims

Ms. Delores Barnes

Mr. George Thomas

Mr. James Martin

Mr. Elbert Hines

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – Plant Asset Listing for Dover Industries/Rotary Lift Division dated April 2001.

7. The following items are officially recognized as part of the record of proceedings:

Board Exhibit A – The Form 133 petition with adjustment calculations for software assets, real property assets, and special tooling assets attached.

Board Exhibit B – Notice of Hearing on Petition dated August 29, 2003.

8. The property subject to this appeal is personal property used by the Petitioner as part of its plant operations located at 2700 Lanier Drive, Madison, Indiana. The 2001 personal property assessment is \$5,213,960. The Administrative Law Judge did not view the property.

### **Jurisdictional Framework**

9. This matter is governed by the provisions of Ind. Code § 6-1.1-15 and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
10. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.5-4-1.

### **Indiana's Personal Property Tax System**

11. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
12. Personal property includes all tangible property (other than real property) which is being:
  - (A) held in the ordinary course of a trade or business;
  - (B) held, used, or consumed in connection with the production of income; or
  - (C) held as an investment.See Ind. Code § 6-1.1-1-11.
13. Indiana's personal property tax system is a self-assessment system. Every firm, company, partnership, association, corporation, fiduciary, or individual owning,

possessing, or controlling personal property with a tax situs within Indiana must file the appropriate return reporting such property in each taxing district where property is located or held on the assessment date. See Ind. Code § 6-1.1-1-10.

### **State Review and Petitioner's Burden**

14. The Board does not undertake to reassess property, or to make the case for the Petitioner. The Board decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
15. The Petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998) and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
16. The Petitioner has a burden to present more than just 'de minis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minis' means only a minimal amount.]
17. The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

18. The Board will not change the determination of the PTABOA unless the Petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’, proven both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998) and *North Park Cinema, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d (Ind. Tax 1997). [A ‘prima facie case’ is established when the Petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact finder) to conclude that the Petitioner’s position is correct. The Petitioner has proven his position by a ‘preponderance of the evidence’ when the Petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the Petitioner’s position.]

### **Discussion of the Issues**

#### *Issue 1 – Whether the total cost of depreciable assets erroneously includes the cost of application software.*

19. The Petitioner contends that the total cost of depreciable assets should be adjusted because the total cost reported in its 2001 Business Tangible Personal Property Return, Form 103, erroneously included the cost of application software.
20. The Respondent asserts that the PTABOA did not object to the Petitioner’s request to correct the total cost of depreciable assets reported for 2001. The PTABOA, because it did not have the expertise to review and analyze the Petitioner’s request, opted to deny the Form 133 petition triggering the Petitioner’s right to appeal at the next administrative level.
21. The applicable rules governing this issue are:

**50 IAC 4.2-1-3**

Generally, all property shall be taxed as personal property, real estate, ....unless specifically exempted by law.

**50 IAC 4.2-4-1**

In general, “depreciable personal property”, as used in this article, is all tangible personal property used in a business or trade to produce income unless that property is treated differently in this article.

**50 IAC 4.2-4-2(a)**

The cost of depreciable personal property as recorded on the taxpayer’s books and records must be utilized in determining the value of depreciable personal property subject to assessment.

**50 IAC 4.2-4-2(b)**

The cost of machinery, furniture, tools, computers (excluding application software) and other plant assets includes all cost necessary to place the asset ready for service.

**50 IAC 4.2-4-3(f)**

Computers (including hardware and operational software) must be reported at the actual acquisition cost regardless of how this property may be valued on the taxpayer’s books and records. If the value reflects charges for customer services, such as educational services, maintenance, or application software that relate to future periods and not to the value of tangible property, such charges may be deducted as nonassessable intangible personal property (to the extent that a separate charge or value can be determined).

22. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The total cost depreciable assets, derived from the 2001 Asset Listing, included the cost of application software. *Faulkner testimony.*
  - b. The 2001 Asset Listing identifies the cost of the application software included in the total cost of depreciable assets reported by the Petitioner and reflected in the adjustment calculation. *Petitioner’s Ex. A; Board Ex. A.*
  - c. The PTABOA does not object to the adjustment sought by the Petitioner. The

PTABOA did not feel knowledgeable enough with regard to accounting principles to make a decision in this matter. *Sims testimony; Hines testimony.*

*Analysis of Issue 1 – Whether the total cost of depreciable assets erroneously included the cost of application software.*

23. The relevant facts are undisputed.
24. For the March 1, 2001 assessment year, the Petitioner reported a total depreciable asset cost derived from the Petitioner's 2001 Asset Listing. The asset listing included the cost of application software. The PTABOA denied the Petitioner's attempt to correct this error because it lacked the expertise in matters of accounting principles.
25. In assessment challenges, the taxpayer must first establish that the assessment is in error and then must establish the correct assessment. The testimony of the PTABOA clearly establishes that no objection exists with regard to the alleged assessment error.
26. All property is assessed as either real or personal property unless specifically excluded from assessment. Hardware and operational software are components of a computer that are assessable as personal property, but application software is a computer component that may be deducted if a separate value for that software can be identified.
27. The evidence of record clearly demonstrates that the total cost of depreciable assets for the March 1, 2001 assessment date included the cost for application software. The evidence of record also clearly identifies a separate cost for the application software in question. This evidence, undisputed by the Respondent, stands as evidence sufficient to establish an error in the assessment and to establish the correct assessment.



28. For all the reasons set forth above, the Petitioner has, by a preponderance of the evidence, shown that the March 1, 2001 assessment was incorrect because the total cost of depreciable assets erroneously included the cost of application software.

*Issue 2 – Whether the total cost of depreciable assets erroneously includes the cost of certain real property items.*

29. The Petitioner contends that the total cost of depreciable assets should be adjusted because the total cost reported in its 2001 Business Tangible Personal Property Return, Form 103, erroneously included the cost of items classified as real property.
30. The Respondent asserts that the PTABOA did not object to the Petitioner’s request to correct the total cost of depreciable assets reported for 2001. The PTABOA, because it did not have the expertise to review and analyze the Petitioner’s request, opted to deny the Form 133 petition triggering the Petitioner’s right to appeal at the next administrative level.
31. The applicable rules governing the issue are:

**50 IAC 4.2-1-3**

Generally, all property shall be taxed as personal property, real estate, . . . unless specifically exempted by law.

**50 IAC 4.2-4-1**

In general, “depreciable personal property”, as used in this article, is all tangible personal property used in a business or trade to produce income unless that property is treated differently in this article.

**50 IAC 4.2-4-10(c)**

Structural and other improvements to buildings, including foundations, walls,

floors, roof, insulation, stairways, partitions, loading and unloading platforms and canopies, areaways, systems for heating, air conditioning, ventilation, sanitation, fixed fire protection, lighting, plumbing, drinking water, elevators and escalators are real property.

32. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The total cost depreciable assets, derived from the 2001 Asset Listing, included the cost of items identifiable as real property. *Faulkner testimony.*
  - b. The 2001 Asset Listing identifies the cost of the real property items included in the total cost of depreciable assets reported by the Petitioner and reflected in the adjustment calculation. *Petitioner's Ex. A; Board Ex. A.*
  - c. The PTABOA does not object to the adjustment sought by the Petitioner. The PTABOA did not feel knowledgeable enough with regard to accounting principles to make a decision in this matter. *Sims testimony; Hines testimony.*

*Analysis of Issue 2 – Whether the total cost of depreciable assets erroneously included the cost of certain real property items.*

33. The relevant facts are undisputed.
34. For the March 1, 2001 assessment year, the Petitioner reported a total depreciable asset cost derived from the Petitioner's 2001 Asset Listing. The asset listing included the cost of certain real property items. The PTABOA denied the Petitioner's attempt to correct this error because it lacked the expertise in matters of accounting principles.
35. In assessment challenges, the taxpayer must first establish that the assessment is in error and then must establish the correct assessment. The testimony of the PTABOA clearly establishes that no objection exists with regard to the alleged assessment error.

36. All property is assessed as either real or personal property unless specifically excluded from assessment. Structures and improvements to structures, such as sprinkler systems, floors, lighting, are classified as real property for assessment purposes.
37. The evidence of record clearly demonstrates that the total cost of depreciable assets for the March 1, 2001 assessment date included the cost for items classified as real property. This evidence, undisputed by the Respondent, stands as evidence sufficient to establish an error in the assessment and to establish the correct assessment.
38. For all the reasons set forth above, the Petitioner has, by a preponderance of the evidence, shown that the March 1, 2001 assessment was incorrect because the total cost of depreciable assets erroneously included the cost of certain real property items.

*Issue 3 – Whether the total cost of depreciable assets should be adjusted to reflect the value of items classified as special tools.*

39. The Petitioner contends that the total cost of depreciable assets should be adjusted to reflect the proper value of items classified as special tools for the March 1, 2001 assessment.
40. The Respondent asserts that the PTABOA did not object to the Petitioner's request to correct the total cost of depreciable assets reported for 2001. The PTABOA, because it did not have the expertise to review and analyze the Petitioner's request, opted to deny the Form 133 petition triggering the Petitioner's right to appeal at the next administrative level.
41. The applicable rules governing this issue are:

**50 IAC 4.2-1-3**

Generally, all property shall be taxed as personal property, real estate, ....unless specifically exempted by law.

**50 IAC 4.2-4-1**

In general, “depreciable personal property”, as used in this article, is all tangible personal property used in a business or trade to produce income unless that property is treated differently in this article.

**50 IAC 4.2-4-2(a)**

The cost of depreciable personal property as recorded on the taxpayer’s books and records must be utilized in determining the value of depreciable personal property subject to assessment.

**50 IAC 4.2-6-2**

The total true tax value of special tools is the sum of 30% of the total value of special tools acquired between March 2 and March 1 of the assessment year plus 3% of the total value of all other special tools on hand.

42. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The total cost depreciable assets, derived from the 2001 Asset Listing, included the cost of assets identified as special tools. *Faulkner testimony.*
  - b. The 2001 Asset Listing identifies the cost of the special tools included in the total cost of depreciable assets reported by the Petitioner and reflected in the adjustment calculation. *Petitioner’s Ex. A; Board Ex. A.*
  - c. The PTABOA does not object to the adjustment sought by the Petitioner. The PTABOA did not feel knowledgeable enough with regard to accounting principles to make a decision in this matter. *Sims testimony; Hines testimony.*

*Analysis of Issue 3 – Whether the total cost of depreciable should be adjusted to reflect the cost of items classified as special tools.*

43. The relevant facts are undisputed.
44. For the March 1, 2001 assessment year, the Petitioner reported a total depreciable asset cost derived from the Petitioner's 2001 Asset Listing. The asset listing included the cost of items classified as special tools. The PTABOA denied the Petitioner's attempt to correct this error because it lacked the expertise in matters of accounting principles.
45. In assessment challenges, the taxpayer must first establish that the assessment is in error and then must establish the correct assessment. The testimony of the PTABOA clearly establishes that no objection exists with regard to the alleged assessment error.
46. All property is assessed as either real or personal property unless specifically excluded from assessment. Special tools are assessed as personal property. The value used as the basis of the assessment is determined by adjusting the cost of all special tools acquired in the current assessment period (March 2 through March 1) and all other special tools on hand.
47. The evidence of record clearly demonstrates that the total cost of depreciable assets for the March 1, 2001 assessment date included the unadjusted cost for special tools. This evidence, undisputed by the Respondent, stands as evidence sufficient to establish an error in the assessment and to establish the correct assessment.
48. For all the reasons set forth above, the Petitioner has, by a preponderance of the evidence, shown that the March 1, 2001 assessment was incorrect because the total cost of depreciable assets failed to reflect the proper cost of special tools.

### **Summary of Final Determination**

Determination of Issue 1 - Whether the total cost of depreciable assets erroneously included the cost of application software.

49. The Petitioner, by a preponderance of the evidence, has met its burden of showing that the cost of application software was erroneously included in the total cost of depreciable assets. A change is made in the assessment as a result of this issue.

Determination of Issue 2 - Whether the total cost of depreciable assets erroneously included the cost of certain real property items.

50. The Petitioner, by a preponderance of the evidence, has met its burden of showing that the cost of real property items was erroneously included in the total cost of depreciable assets. A change is made in the assessment as a result of this issue.

Determination of Issue 3 - Whether the total cost of depreciable assets should be adjusted to reflect the cost of items classified as special tools.

51. The Petitioner, by a preponderance of the evidence, has met its burden of showing that the total cost of depreciable assets should be adjusted to reflect the cost of items classified as special tools. A change is made in the assessment as a result of this issue.

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Commissioner, Indiana Board of Tax Review

**IMPORTANT NOTICE**

**- APPEAL RIGHTS -**

**You may petition for judicial review of this final determination of corrected assessment pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**